

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, August 24, 2005, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Walter Tarmann
Walter Schmidt

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Sheri Mount

OTHERS PRESENT: Town of Merton Board of Adjustment
Marion Mueller, BA05:059, mother to petitioner
Karen Hennekens, BA05:060, petitioner/property owner
Lawrence Baab, BA05:063, petitioner
Roger Abdin, BA05:063, property owner
Paulette & Dave Dileger, BA05:061, neighbor
Dale Kolbeck, BA05:062, petitioner/architect
Michael & Pam Melugin, BA05:062, property owners

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

OTHER ITEMS REQUIRING BOARD ACTION:

Adoption of the Board of Adjustment Rules of Procedure

Mr. Bartholomew *I make a motion to adopt the Board of Adjustment Rules of Procedure.*

The motion was seconded by Mr. Schmidt and carried unanimously.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Tarmann *I make a motion to approve the Summary of the Meeting of August 10, 2005.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

NEW BUSINESS:

BA05:059 BARBARA MUELLER

Mr. Bartholomew

I make a motion to adopt the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report.

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed addition must be no closer to the north lot line than the existing residence, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the addition must be located so that the outer edges of the overhangs conform to the offset/setback requirements.
2. The proposed patio/deck shall be located on the south side of the addition and shall adhere to the offset requirement.
3. The proposed addition, patio/deck, must meet the shore and floodplain setback requirements of the Ordinance.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will bring the first floor area of the residence into conformance with the district-required minimum. The existing residence conforms to all of the locational requirements of the Ordinance except for offset and this will continue to be the case. The home is well within the shore setback, floodplain setback, floor area ratio and open space requirements. The proposed addition and the deck/patio will be no closer to the lot lines than the existing residence. Finally, the approval of this request, with the recommended conditions, will result in a residence more in keeping with other residences in the area, while not adversely affecting the Lake or the neighboring properties. Therefore, the approval of this request with the recommended conditions is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

BA05:060 KAREN & SIDNEY HENNEKENS

Mr. Ward

I make a motion to approve the request with the following conditions:

1. *The deck shall be no larger than 4 ft. deep and 6 ft. wide (parallel to the home) to provide access from the door on the northwest side of the home. In addition, stairs off the deck may be permitted as long as they are no closer to the wetland than the deck.*
1. *Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed deck, existing residence,*

detached garage, any existing decks or patios, as well as the existing sidewalks, stairs, and walkways, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for denial.

The reasons for the Board's decision are as follows:

Variances should be granted to provide only the minimum relief necessary for a reasonable use of the property. It has been demonstrated, as required for a variance, that denial of the additional requested variance from the conservancy setback requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It is felt by Waukesha County Board of Adjustment that a small deck and stairs are required to allow for safe entry and exit from the home. Therefore, the approval of the variance from the conservancy setback requirement to construct a small deck/landing provides for a continued reasonable use of the property, is not unnecessarily burdensome, would not be contrary to the public interest and therefore is in conformance with the purpose and intent of the Ordinance.

BA05:063 ROGER J. ABDIN - Owner
Lawrence Babb – Petitioner

Mr. Schmidt

I make a motion to adopt the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report.

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. Prior to the issuance of a Zoning Permit, the boathouse and lower deck (the one along the shoreline) must be removed from the property. A plan for the shoreline restoration and revegetation shall be submitted to Planning & Zoning Division staff for review and approval. The revegetation plan shall address stabilization of the shoreline area and also screening of the "wall" of the upper deck from the Lake.
2. The proposed residence must be designed so that the total footprint, including the first floor, any covered decks, covered patios, and/or covered porches, and the attached garage does not exceed 1,300 sq. ft. This will result in approximately 3,309 sq. ft. of open space on the property.

3. The garage must be front entry. This is to prevent additional impervious surface from being created for a new driveway.
4. The proposed residence must be reduced in size so that the total floor area, including the first and second floors (not including the basement level), any covered decks, covered patios, and/or covered porches, and the attached garage do not exceed 1,700 sq. ft. This will result in a floor area ratio of approximately 36.9%.
5. The proposed residence must not exceed three stories (including any exposed basement level), as viewed from the lake. The proposed residence and attached garage must also conform to the height requirement of the Ordinance.
6. The proposed second story shall be constructed within the existing footprint. It shall not be any closer to the lot lines or road than the existing structure.
7. The proposed second story, including any associated decks, patios, and/or covered porches must be located a minimum of 35 ft. from the 100-year floodplain elevation or the Ordinary High Water Mark of Upper Oconomowoc Lake, whichever is more restrictive, with overhangs not to exceed two (2) ft. in width. No deck or patio of any kind is permitted on the second floor.
8. Any proposed storage area over the attached garage must be included in the floor area calculations, unless it is accessible only via pull-down stairs from the garage and cannot be accessed from the upper level of the residence. If the house plans indicate that any storage area over the attached garage could be easily converted to living area with a direct connection to the upper level of the residence, a Declaration of Restrictions, stating that area cannot be converted to living area without the approval of the Waukesha County Board of Adjustment or its successor, must be recorded in the Waukesha County Register of Deed's office, prior to the issuance of a Zoning Permit.
9. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
10. Prior to issuance of a Zoning Permit, a detailed cost estimate of the time and materials of all proposed work must be submitted to the Planning and Zoning Division staff.
11. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the existing residence, new attached garage, any existing decks or patios, as well as the existing sidewalks, stairs, and walkways, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also show the location of the 100-year floodplain elevation on the property.
12. No new retaining walls will be permitted.
13. In order to ensure the construction does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the

Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. This grading plan may be combined with the Plat of Survey required in Condition No. 7.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome. It has been demonstrated, as required for a variance, that denial of the requested variances from the shore and floodplain setback, road setback, floor area and open space requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Variances, however, should be granted only to provide the minimum relief necessary for a reasonable use of the property. In addition, variances should only be granted to accommodate physical limitations on the property and not the personal preferences or needs of the current property owner. It is felt by the Waukesha County staff, that the residence and attached garage, as recommended, would still provide for a reasonable use of the property. The property is not large enough to support the proposed residence, proposed garage and the boathouse. As recommended, a footprint of 1,300 sq. ft. and a total floor area of 1,700 sq. ft. (not including the basement square footage) provides a reasonable use of the property, is not unnecessarily burdensome and will permit the construction of a second story and attached garage that will be appropriately sized for the lot, not detrimental to the surrounding neighborhood or contrary to the public interest. In addition, it results in the removal of two nonconforming structures from the property and decreases the amount of impervious surfaces. Any improvement in that regard on this property is extremely beneficial. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA05:061 GEORGE KISER III & ESTELLA KISER - Owners
Paul Schultz – Petitioner

Mr. Bartholomew

I make a motion to approve the request from the floor area ratio requirement and adopt the remainder of the staff's recommendation with the following modifications:

Condition No. 1 shall be changed to read "The proposed residence, including the first and second floors, any covered decks, covered patios, and/or covered porches, must adhere to the shore setback."

Condition No. 3 shall be changed to read: "The proposed residence must be reduced in size so that the total square footage of the first and second floors of the residence, any covered decks, covered patios and/or covered porches and detached garage shall not exceed 16% of

the lot area (i.e. it must conform to the floor area ratio requirement of the Ordinance). Prior to the issuance of a zoning permit, a survey done by a Registered Land Surveyor indicating the exact legal lot area shall be submitted to Planning & Zoning Division staff. The proposed residence and attached garage shall be sized accordingly."

The motion was seconded by Mr. Ward and carried unanimously.

The staff's recommendation was for approval of the requests for variances from the offset and remodel/expand a nonconforming structure in excess of 50% of its fair market value requirements and denial of the request for a variance from the floor area ratio requirement of the Ordinance, with the following conditions:

1. The proposed residence, including the first and second floors, any covered decks, covered patios, and/or covered porches, must adhere to the 75 ft. shore setback.
2. Prior to the issuance of a zoning permit, the existing nonconforming patio must be removed.
3. The proposed residence must be reduced in size so that the total square footage of the first and second floors of the residence, any covered decks, covered patios and/or covered porches and detached garage shall not exceed 15% of the lot area (i.e. it must conform to the floor area ratio requirement of the Ordinance). Prior to the issuance of a zoning permit, a survey done by a Registered Land Surveyor indicating the exact legal lot area shall be submitted to Planning & Zoning Division staff. The proposed residence and attached garage shall be sized accordingly.
4. The proposed residence must be rebuilt within the existing foundation. No additional excavation for basement/crawlspace area is permitted.
5. The proposed residence must not exceed three stories (including any exposed basement level), as viewed from the lake. The proposed residence must also conform to the height requirements of the Ordinance.
6. The first floor of the structure shall be placed at or above the flood protection elevation and reconstruction may occur on the same foundation or newly constructed foundation which represents no greater an encroachment or extension of the previously existing structure other than vertically. Said foundation shall be flood proofed and certified as set forth herein. Fill shall be used to elevate the first floor so as to meet the above. The fill shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation at least fifteen (15) feet beyond the limits of the structure. Where such distance cannot be achieved because of lot lines or other similar constraints, said fill elevation shall extend as far as is practicable resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties. In addition, where the fifteen (15) feet of fill cannot be achieved as set forth above, the structures shall be flood proofed to the flood protection elevation in accordance with the methods set forth herein and shall be certified as such by a professional engineer registered in the State of Wisconsin. Other methods may be used, as long as they are certified as set forth above, which are designed to the flood protection elevation for the particular area in question. All flood proofing measures shall at a minimum provide anchorage to resist flotation and lateral

movement, and shall insure that the structural walls and floors are watertight. In order to insure that adequate measures are taken, the applicant shall submit a plan or document certified, as above, that the flood proofing measures are adequately designed to protect the property to the flood protection elevation for the subject area.

7. The basement or crawl space shall be at or above the floodplain elevation unless a community wide exemption allowing flood proofing of basements has been granted by the Federal Insurance Administration (FIA) of the Federal Emergency Management Administration (FEMA). Heating and electrical equipment shall be at or above the flood protection elevation.
8. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions must be submitted to the Planning and Zoning Division staff for review and approval.
9. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff. All onsite waste disposal systems and private wells shall be floodproofed to the flood protection elevation and shall conform with the provisions of the Waukesha County Sanitary Code and/or Wisconsin Administrative Codes where applicable to such facilities.
10. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, any decks or patios, as well as any newly proposed sidewalks, stairs, and walkways, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
11. No retaining walls are permitted.
12. In order to ensure the construction of the new residence does not result in adverse drainage onto adjacent properties or the Lake, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. This grading plan may be combined with the Plat of Survey required in Condition No. 10.

The reasons for the Board's decision are as follows:

It is the opinion of the Waukesha County Board of Adjustment that it has been demonstrated, as is required for a variance that denial of the requested variances from the offset, floor area ratio, and remodel/expand a nonconforming structure in excess of 50% of its fair market value requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity

with such restrictions unnecessarily burdensome. The granting of variances from the floor area ratio, 50% provision and the offset requirement to allow a new residence to be built on the existing foundation plus the addition of a second floor allows the owners reasonable use of the property that is not unnecessarily burdensome. In addition, the approval of this request, with the recommended modifications and conditions will result in the removal of a nonconforming patio from the property. It will also result in a flood-proofed residence. Therefore, the approval of the request for variances from the floor area ratio, offset and 50% provision of the Ordinance for the proposed residence are not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

BA05:062 MICHAEL & PAM MELUGIN - Owners
Anders Inc – Petitioner

Mr. Schmidt

I make a motion to approve a floor area ratio variance and adopt the staff's recommendation, as stated in Staff Report, with the following modifications:

Note that a shore setback variance is not required as it has been determined that the existing structure is eligible for averaging.

Conditions No.1 and No.2 shall be deleted.

Condition No.3 shall be changed to read, "The total square footage of the first and second floors of the residence and attached garage shall not exceed 15.2% of the lot area (i.e. it must conform to the floor area ratio requirement of the Ordinance). Prior to the issuance of a zoning permit, a survey done by a Registered Land Surveyor indicating the exact legal lot area shall be submitted to Planning & Zoning Division staff. The proposed residence and attached garage shall be sized accordingly."

Condition No.9 shall be changed to read, "No new retaining walls are permitted within 75 ft. of the Lake."

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for denial of the shore setback variance request and approval of request to remodel/expand a nonconforming structure in excess of 50% of its fair market value requirement, with the following conditions:

1. Prior to the issuance of a Zoning Permit, the deck and patio adjacent to the boathouse must be removed and the area restored with vegetation. A 3 ft. wide walkway is all that is permitted.
2. The residence and attached garage shall be redesigned to adhere to the shore setback requirement of 64.2 ft. with overhangs not to exceed 2 ft. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform to the

offset and setback requirements.

3. The total square footage of the first and second floors of the residence and attached garage shall not exceed 15% of the lot area (i.e. it must conform to the floor area ratio requirement of the Ordinance). Prior to the issuance of a zoning permit, a survey done by a Registered Land Surveyor indicating the exact legal lot area shall be submitted to Planning & Zoning Division staff. The proposed residence and attached garage shall be sized accordingly.
4. The proposed residence must be rebuilt within the existing foundation. No additional excavation for basement area is permitted.
5. The proposed residence must not exceed three stories (including any exposed basement level), as viewed from the lake. The proposed residence and attached garage must also conform to the height requirements of the Ordinance.
6. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
7. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
8. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, attached garage, any decks or patios, as well as any newly proposed sidewalks, stairs, and walkways, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
9. No retaining walls are permitted.
10. In order to ensure the construction of a new residence and attached garage does not result in adverse drainage onto adjacent properties or the Lake, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. This grading plan may be combined with the Plat of Survey required in Condition No. 8.
11. In order to ensure that the existing slope is protected to the maximum extent possible, a Plat of Survey clearly identifying the total area of disturbance and all proposed protections for the slope must be submitted to Planning & Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit.

The reasons for the Board's decision are as follows:

It was determined that although the existing structure is to be removed down to the foundation, it is eligible to be utilized for averaging; therefore a shore setback variance is not required. It has been demonstrated, as is required for a variance that denial of the requested variance from the 50% provision of the Ordinance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The granting of variances from the floor area ratio and the 50% provision requirements to allow a new residence to be built on the existing foundation plus the addition of a second floor and larger garage allows the owners reasonable use of the property that is not unnecessarily burdensome. It allows the construction of a new residence with minimal disturbance to the property and hillside. Therefore, the approval for the proposed residence is not contrary to the public interest and will be in conformance with the purpose and intent of the Ordinance.

ADJOURNMENT:

Mr. Schmidt

I make a motion to adjourn this meeting at 9:30 p.m.

The motion was seconded by Mr. Bartholomew and carried unanimously.

Respectfully submitted,

Sheri Mount
Secretary, Board of Adjustment